GOL-HIL

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 1190

THE PEOPLE OF STATE OF ILLINOIS,

vs.

PETE GOLSON. Pet

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLLINOIS, AND BRIEF IN SUPPORT THEREOF.

ROBERT E. BRYANT,
Attorney for Petitioner.
3509 S. State St.,
Chicago.

W. G. ANDERSON,
Of Counsel.

SUBJECT INDEX.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

NO.

THE PEOPLE OF STATE OF ILLINOIS,

vs.

PETE GOLSON.

PETITION.

Petitioner, Pete Golson, the above named defendant, a resident of the County of Cook and State of Illinois, was convicted in the Criminal Court of Cook County of the crime of murder by the Court, jury having been waived, and was sentenced to fourteen years imprisonment in the Illinois State Penitentiary at Joliet, Illinois.

SUMMARY STATEMENT.

It is the contention of petitioner that the trial, conviction and sentence rendered against him was without due process of law and deprives petitioner of his liberty contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

That the common law record fails to show that the grand jury was selected from among persons *who were residents of the County of Cook*, qualified thereby to act in the performance of their duties as such grand jurors, the record merely reciting:

> "And afterwards, to-wit: on the seventh day of August in the year last aforesaid, the Sheriff of Cook County returned into court the venire facias heretofore issued for a grand jury for this term and returnable today, by which it appears that the following persons have been duly summoned to appear this day and serve as grand jurors at the following term of this court."

The Trial and Sentence.

An indictment was returned by the grand jury of Cook County against Pete Golson, the petitioner herein, charging him with the crime of murder.

The cause was tried in the Criminal Court of Cook County, the defendant, petitioner, pleaded not guilty, waived a jury trial, was found guilty by the trial court, and was sentenced to fourteen years imprisonment in the Illinois State Penitentiary. A writ of error was sued out from the Supreme Court of Illinois, and upon consideration of same by the Court the judgment of the Criminal Court was affirmed.

The Trial of the Case.

The defendant pleaded self defense, testifying that the deceased had threatened his life on several occasions and that at the time of the killing the deceased had attempted to withdraw something from his pocket which the defendant thought was a weapon and that when the deceased, who was in a car suddenly met the defendant, believing that he would then and there carry out his threat to kill him, he fired the shots at the deceased.

At the time of the shooting, Thelma Clepper and her daughter were in the front seat with the deceased, who was driving them home, and neither of these two persons testified that they or either of them was looking at the deceased just before or at the time of the shooting, but that the witness Thelma Clepper was looking toward the entrance of her apartment at that particular time (Rec. 21), and when the first shot was fired she did not turn around to see what Mason, the deceased, was doing—"just sat still, didn't even scream".

Mary Jane Ford, daughter of Thelma Clepper testified that she didn't notice that Golson had anything in his hands at the time she first saw him and that the first time she noticed anything in his hand was when he put his hand up to te glass; (Rec. 27), witnes further testified on cross examination that at the time the shots were fired she was not looking at Mason, the deceased—se was facing forward; that she did not see what Mason was doing (Rec. 35).

The defendant at the close of the People's case in chief thereupon put on the following character witnesses:

Ferdinand Cole, a tailor, who testified that he had known the defendant about eight years and that his general reputation in the community in which he resided prior to the return of the indictment for being a peaceable law-abiding citizen was good (Rec. 41).

Dr. William Zeigler, a dentist for fifteen years also testified to the good reputation of the defendant.

Nathan Williams, likewise testified to the good reputation of the defendant.

Leslie William testified that she was a bar maid at 5920 Prairie Avenue and that in the month of July, 1944, or latter part of June she was present in the tavern where she worked when Pete Golson, the defendant and Mrs. Clepper were there and that she was present when an argument took place between the defendant and Marion Mason, the deceased, took place; that Marion Mason started cursing the defendant Pete Golson; that she heard Thelma say to the deceased, "Why don't you go and let the man alone?"; that the deceased thereupon replied "You shut your God damn mouth. If you say another word I'll hit you in the mouth"; that she went back to call the proprietor; that the deceased thereupon started to leave, but that he said to the defendant "The last thing I do, you black son-of-a-bitch I am going to kill you"; that the defendant never opened his mouth (Rec. 51-52).

Zeke Parker, a guard at the County jail, testified that in the last week in June, 1944 he was in the tavern at 5920 Prairie Avenue and that while Golson and the lady were sitting in the tavern, Popeye (the deceased) began to swear and curse the defendant and that the deceased said

to Golson, "If you just move I'll knock the top of your head off."

That he saw a pistol in the gentleman's pocket—the handle of it was sticking out (Rec. 62) and that he sent a boy named Charlie to get Officer Reese to come to the tavern and that thereupon the deceased walked out of the door, but that Officer Reese did not arrest him and that the deceased said: "I'll get even with you, you black so and so" (Rec. 63).

Pete Golson the defendant in his own behalf testified that he was a janitor by occupation for nine years and that he had known Mrs. Thelma Clepper for nine years (Rec. 76); thathe had visited Mrs. Clepper quite often and that he had known Marion Mason about two months, and that he never had any trouble or argument with Mason before this Sunday night; that Mrs. Clepper was with him between eleven thirty and twelve o'clock this Sunday night at the tavern and that Popeye came into the saloon and said something to Mrs. Clepper, and that he turned to him and said, "I hope you don't like it and he then called him every kind of name and said; now if you just raise your voice I will shoot the top of your head off," and called him a black son of a bitch and everything else that he could think of (Rec. 78); that the defendant went in search of Mr. Johnson, the proprietor of the tavern and asked him if he would let him out the back door, and by that time Officer Reese came in and the deceased then was going out of the door; that before the deceased left he said to Golson: "You black son of a bitch, wherever I see you, I'll kill you," and the defendant testified that he believed that Popeye would kill him whenever he saw him—that he was afraid of him.

The defendant testified further that Popeye weighed around two hundred pounds and that he the defendant, weighed one hundred seventy-one pounds (Rec. 80).

Defendant further testified that on Monday afternoon he went to the police station, saw an officer and told him he wanted a warrant for this fellow, told the officer what had happened and that the officer then asked him, "Did he hit you?" and defendant said "No"; that he did not get a warrant.

Defendant further testified that on the night of July 17th, the night of the shooting he saw Mrs. Clepper on the street and that she invited him to come back to her house about eleven-thirty or twelve o'clock and would then finish talking with him (Rec. 82) that she wanted to go to a certain show; that defendant walked with her and her daughter who was with her as far as 59th and South Park, and that the defendant Golson helped her into the cab and she said to him "Come back to the house about eleven thirty or twelve o'clock and we will finish talking about the conversation they had started on, and that when he came back at eleven thirty he, defendant, did not know that Mason was going to come to her house or in the vicinity of her home that night (Rec. 83).

That he went there about eleven thirty and twelve o'clock and went upstairs; that Mrs. Clepper's youngest daughter and defendant were standing at the door of the apartment when the car drove up, and that thereupon Leona said: "There is mother there now" and defendant walked out to assist them out of the rain and that when defendant got to the door of the car, Mary Jane slammed open the door to get out of the car and Popeye swore at him and reached for his pocket as if he was going for a gun and defendant then pulled his gun and fired (Rec. 85).

Defendant testified he fired because he was afraid of Popeye and he thought he would kill him—would do just what he told him the last thing he was going out of the tavern (Rec. 86).

Defendant further testified that when he started to assist Mrs. Clepper out of the car he did not know that Popeye was there until he made the remark—he thought it was a cab. Defendant further said he had never threatened Popeye—never had a conversation with him (Rec. 86).

Jerry Johnson, testified that he runs the tavern at 5920 Prairie Ave.; that he knows Golson when he sees him and that there was a disturbance in his tavern the first of July or the last of June; that he was sitting down in the tavern, reading the paper, when Pete runs back to him and said, "Let me out the back door." That witness said "For what?" Golson said, "A man wants to kill me and I didn't want any trouble." Golson was just trembling—he was a very nervous man—even changed his color. That witness then went to see what was wrong, saw a lady sitting at the corner of the bar, man standing facing her, who said to witness: "What have you got to say about it, you son of a bitch, I'll kill you." Witness did not know the man and later learned his name was Popeye. That the lady stepped out and said, "You ain't going to say a damn thing to me" and that at that time this man backs out, with his hand in his pants pocket. Officer Reese came in as the man backed out of the door (Rec. 104).

Proceedings had in the Supreme Court of Illinois.
Jurisdiction.

The petitioner having been duly convicted in the Criminal Court of Cook County sued out a Writ of Error from

the Supreme Court, and upon due consideration of said cause the judgment rendered against him was affirmed. The order of affirmance is as follows:

Decision.

Plainti ffin error entered a plea of not guilty in the criminal court of Cook county to an indictment charging him with the murder of Marion Mason. He waived a trial by jury. The cause was tried before the court. The court found plaintiff in error guilty and entered judgbent sentencing him to the penitentiary for a term of fourteen years. To review that judgment he has brought the record here by writ of error.

Plaintiff in error seeks a reversal of the judgment in this court on the ground that he claims he was acting in self-defense at the time he kille dthe deceased. The record shows that the killing occurred on July 18, 1944. Shortly before the killing, the deceased had met Thelma Clepper and her daughter, Mary Jane Ford, at a tavern. They left the tavern in the deceased's automobile, which he was driving. The three of them were seated in the front seat. The night was dark and rainy. The windows of the automobile were closed. When they reached the apartment building in which the women lived, another car was parked at the curb. This made it necessary for the deceased to stop his car in the street some eight feet from the curb. The two women and plaintiff in error were the only eyewitnesses to the shooting. The women testified that when the car was stopped, Mary Jane Ford, who was seated next to the car door, started to open the door for the purpose of getting out. About that time they observed plaintiff in error leave the curb and approach the automobile in which they were seated. They both testified that he had a gun in his hand and was running; that when he

reached the car he immediately placed the gun against the glass inthe righthand front window and started shooting through the glass at the deceased, who was seated behind the wheel. They testified that he fired at least three shots when the gun "clicked," without firing, and that he then ran away. Plaintiff in error testified that he approached the ca rfor the purpose of opening the door and assisting the women in getting out of the car; that when he gt close to the car he observed for the first time it was the deceased who was behind the wheel; that he saw deceased reach with his left hand toward his pocket or the pocket on the inside of the door of the automobile, and was afraid he was reaching for a gun with which to shoot plaintiff in error. He also testified, and proved by other witnesses, that sometime before the night of the killing, the deceased had made threats against him and had told him that he was going to kill him. Proof of such threats was properly admitted by the court. Such proof was competent as bearing upon the conduct of the deceased testified to by plaintiff in error, and the interpretation he placed on such conduct. The only other evivdence offered was proof tending to show that plaintiff in error was a peaceable and law-abiding citizen prior to the alleged offense. Under the evidence in this case such proof was insufficient to raise a reasonable doubt of his guilt of the crime charged.

Plaintiff in error cites and relies upon the well-known rule that where one is assailed in suc ha manner as to induce in him a reasonable and well-grounded belief that he is actually in danger of losing his life or of receiving great bodily harm, he will be justified in defending himself whether the danger was real or only apparent. This rule is settled in this State. It had its origin in *Campbell v. People*, 16 Ill. 17. It has been adhered to in all subsequent cases where the element of self-defense was involved.

Sction 149 of division I of the Criminal Code provides that if a person kill another in self-defense, it must appear that the danger was so urgent and pressing that in order to save his own life or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also that the person killed was the assailant or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given. Ill. Rev. Stat. 1943, chap. 38, par. 367.

The rule is further settled in this State that mere threats of personal injury or even against the life of another will not justify the latter in taking the life of the person who has made such threats, when he is doing nothing to put them into execution. This rule has been announced in many cases, the last announcement being *People* v. *Tillman*, 383 Ill. 560.

The testimony of plaintiff in error as to the acts of the deceased immediately before the fatal shots were fired, stands alone. It is in conflict with the testimony of the other two eyewitnesses, both of whom testified that they saw no acts on the part of the deceased such as plaintiff i nerror described. Moreover, their testimony as to the manner in which plaintiff in error approached the automobile with the gun in his hand before, according to his own testimony, he knew that the deceased was in the car, contradicts his testimony. There being a conflict in the testimony, it was a question of fact for the trial court which testimony was to be believed. Where a cause is tried without a jury the law commits to the trial judge the determination of the credibility of the witnesses and the weight to be accorded to their testimony, and where the evidence is merely conflicting, this court will not sub-

stitute its judgment for that of the trial court. (*People* v. *Ristau*, 363 Ill. 683.) The same rule has been announced in many other decisions of this court.

If the testimony of the two women who were eyewitnesses to the killing is to be believed, as it was by the trial court, there is no element of self-defense in the case. The testimony as to the ultimate facts being in conflict and the finding being dependent upon whether weight and credence should be given to the testimony of plaintiff in error or to the testimony of the other two eyewitnesses, we would not be justified in substituting our judgment for that of the trial court.

affirmed.

Jurisdiction.

Jurisdiction of the United States Supreme Court to review the judgment of the Supreme Court of Illinois. This Court has jurisdiction to review this cause because a Federal question is distinctly raised on the face of the record—the question of the deprivation of the liberty of the defendant under the Fourteenth Amendment to the Constitution of the United.

QUESTION PRESENTED.

The questions presented are: First. Does the common law record affirmatively show that the grand jury which returned the indictment in the Criminal Court of Cook County against petitioner were selected from among the citizens of the County of Cook?

Second: Can a citizen be convicted and deprived of his liberty without proof beyond reasonable doubt of his guilt?

ARGUMENT.

After a conviction of a person the law requires that a record of the necessary legal steps leading up to the conviction shall be appropriately set out in the official records of the Court, and preserved.

The record absolutely fails to show that the grand jurors were selected from among the citizens residing in Cook County as required by law, and for aught the record shows some of the grand jurors who were selected might have resided in *Dupage* or *Will County* at the time of their selection *and when the indictment in this case was returned.*

We respectfully submit that this question could not have been raised on a challenge to the array, for the reason that the record of the proceedings had not at that time been written up in the official records of the case.

Second, we respectfully submit and say that where the evidence in a criminal case shows beyond all doubt that the defendant is not guilty as charged in the indictment, a conviction of such defendant is a deprivation of his liberty, without due process of law and violates the provisions of the Fourteenth Amendment to the Constitution of the United States.

For the foregoing reasons Petitionr respectfully submits that the judgment of the Supreme Court of Illinois affirming the judgment of the Criminal Court of Cook County deprives petitioner of his liberty without due process of law, in violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United State.

PETE GOLSON,
Petitioner.

By ROBERT E. BRYANT,
His Attorney.

W. G. ANDERSON,
Of Counsel.